IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

1. WRIT PETITION NO.1341 of 1990
AND
2. WRIT PETITION NO.1384 of 1990.

Maharashtra State Road Transport Corporation,.. .. Petitioner.
Vs
1. Smt Kamalabai w/o Baburao Jadhav, since deceased by her L.Rs
1A Manoj Mohan Jadhav and ors.

2. Mohan Baburao Jadhav, since deceased by his L.Rs..
2A.Manoj Mohan Jadhav and anr. .. Respondents.

Mr P.L.Naik, for the petitioner.
Mr V.Z.Kankaria, for respondent nos 1 to 3.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : March 09, 2006.

PC:

1. Both these petitions have been filed by the Maharashtra State Road Transport Corporation, an undertaking of the Government of Maharashtra, challenging a common order dated 19.9.1988 passed by the III Additional District Judge, Nasik, deciding two separate appeals, i.e.Misc.Civil appeal Nos 117 and 120 of 1987 filed under the Bombay Government Premises (Eviction) Act, 1955 (for short, "the Act").

2. It appears that the petitioner-corporation had constructed stalls in its building of Central Bus stand at Nasik in midst 1967 and for allotment of these stalls tenders were called sometime in 1967. Baburao Jadhav, the

husband of the present respondent no.1, had shown his willingness for two such stalls and accordingly he came to be allotted the same on a monthly licence fee of Rs.115/-, one was used as a newspaper stall and the other one as toy stall. The lease was extended from time to time and the last such extension expired on 30.11.1976 when the licence fee was at Rs.140/- per month. The allottee Baburao Jadhav was called upon to vacate the stalls on expiry of the licence fee on 30.11.1976 but he did not do so and therefore eviction proceedings were initiated and in the meanwhile he died on 22.3.1977. The eviction order was passed in favour of the corporation and, therefore, the present respondents had approached the lower appellate authority by filing Misc.Civil Appeal Nos 114 and 115 of 1979. During the pendency of these appeals, the stalls were taken over and instead the petitioners were allotted wooden new stalls of 6’x10’ size. These appeals were subsequently decided in favour of the corporation. The wooden cabins which were subsequently allotted were on the licence fee as agreed between the parties but the respondents failed to pay the same and the arrears amounted to over Rs.30,000/-. The corporation also noticed that the toy stall was already handed over to one Baburao Maniram Patil and thus an unauthorised sublease was created by respondent nos 1 and 2. The corporation took out separate proceedings for eviction and to seek

possession of these wooden cabins of 6’x10’ in size on the ground that the licence fee was not paid for a period of more than two years and in addition the respondents had sublet the toy stall unauthorisedly. It was also stated by the corporation that after the licence had expired, they were duty bound to hand over the possession of the stalls.

3. The competent authority and the Dy.Collector allowed both these applications filed under sections 4 and 5 of the Act and called upon the sub-lessee Baburao Maniram Patil to vacate the toy stall and hand over the possession to the corporation. All the respondents were directed to pay an amount of Rs.18,318.55 by way of arrears and the licence fee from July 1985 till the eviction at the rate of Rs.160.45 pm with interest at 9% upto 30.4.1977 and at the rate of 16% from 1.5.1977 till the recovery of the entire amount. The original opponent no.3 Baburao Maniram Patil as well as legal representative of Baburao Jadhav filed two separate appeals as noted herinabove and registered as Misc.Civil Appeal Nos 117 and 120 of 1987. By the impugned judgment, the learned III Addl.District Judge upheld the findings recorded by the competent authority on all issues but proceeded to give benefit of forfeiture to the appellants under section 4(6) of the Act and as a result of which Baburao Patil continued to remain in occupation of the toy stall and the

decree passed by the competent authority came to be set aside in respect of the same.

4. Once it is held that the original allottee has created a third party interest by subleasing or handing over the toy stall to Shri Baburao Patil, it was not permissible for the lower appellate court to extend the benefit of section 4(6) of the Act and to that extent the lower appellate court acted beyond jurisdiction. The reasoning set out by the lower appellate court granting forfeiture is not applicable to the toy stall in respect of which the sub-lessee was put in possession without the knowledge and/or permission of the corporation. We are not in agreement with the lower appellate authority that the possession of the sublessee in respect of the toy stall had become lawful.

5. In the premises, the decree passed by the lower appellate court is required to be modified by confirming the decree in respect of the newspaper stall which was in possession of the original allottee i.e. Smt Kamlabai Jadhav and her son Mohan Jadhav, both of whom are no more and therefore their legal representatives, if any, who will remain in possession of the said stall until the corporation decides to allot the same by inviting fresh tenders. The decree passed in favour of respondent no.3 in Writ Petition No.1384 of 1990 is hereby quashed and set

aside and it is directed that the toy stall in possession of the said respondent of the size of 6’ x 10’ (wooden) shall be handed over to the corporation within two weeks from today. Needless to mention that the corporation shall also be able to take appropriate steps for recovery of rent or arrears, if any.

6. We make it clear that as and when fresh tenders are issued by the corporation in respect of both the stalls, all the respondents will be eligible to apply and compete in the same bid as members of public.

7. These writ petitions are disposed of in terms of the above decree. No costs.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE,J.)**